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09/659,416	09/11/2000	Arto Astala	042933/281559	4624

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EXAMINER

NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
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2143

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01/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/659,416

Applicant(s)

ASTALA ET AL.

Examiner

Phuoc H. Nguyen

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005 and 01 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 47-50 and 66-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 47-50 and 66-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is responsive to Amendment filed 08/08/2005 and 08/01/2006.
2. Claims 47-50 and 66-75 are pending in this application. Claims 47, 49, and 70-75 are independent claims. In Amendment, claims 1-46 and 51-65 are previously cancelled. This Office Action is made non-final.

Specification

3. The disclosure is objected to because of the following informalities:

The applicant should define the computer-readable medium as tangible medium within the original specification scope.

Appropriate correction is required.

4. Claim 66 is objected to because of the following informalities:

Re claim 66, the applicant is advised to remove extra period (.) in line 2.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 74-75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 74, this claim has several instructions for capable of performing some processes, however these instructions do not necessary need to perform that processes. Thus, it is unclear what are the features/limitations of the claim since all the cited instructions are capable of only. For examination purposes, the examiner considers the term "capable of" as "for" for definitely performing the intended processes. Claim 75 has the same rejection.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 74-75 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 74-75 cite a computer program product; however this computer program product is not being executed by a computer. Thus, this computer program is non-functional medium having or storing program instruction without execution. Therefore, claims 74-75 are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 47-49 and 66-75 are rejected under 35 U.S.C. 102(a) as being anticipated by Kroening et al. (U.S. 6,080,207).

Re claim 47, Kroening et al. disclose in Figures 1-2 a method to activate a configuration tool in a configuration server for managing a configurable controlling function of a terminal system (e.g. abstract and general upgrade architecture is seen in Figure 1) comprising the steps of: receiving a configuration upgrade message at the configuration server from a source of an at least partial software upgrade (e.g. from order entry BOM 15 to the configuration server as image builder 10); saving upgrade information in a database associated with the configuration server (e.g. storage device 30 as the database associated with the configuration server in Figure 1 and col. 2 lines 16-48 and col. 4 lines 54-60); identifying a plurality of users requiring at least partial software upgrade (e.g. col. 5 lines 5-52); and thereafter providing the at least partial software upgrade to respective terminal servers (e.g. image server 40) associated with the plurality of users identified to require the at least partial software upgrade for subsequent distribution (e.g. other links to terminals 60-63 in Figure 1) by the terminal servers to respective terminals of users identified to require the at least partial software upgrade

(e.g. col. 4 line 61 to col. 5 line 6 wherein the delta image can be considered as partial software upgrade).

Re claim 48, Kroening et al. further disclose in Figures 1-2 updating at least one terminal equipment associated with a respective terminal server with the at least partial software upgrade provided to the terminal server (e.g. Figure 1 with at least a one terminal 60-63 would receive the delta image).

Re claim 49, Kroening et al. disclose in Figures 1-2 the method to activate the configuration tool in a configuration server for managing a configurable controlling function of a browser (e.g. abstract, general upgrade architecture in Figure 1, and claim 25 in col. 10), comprising the steps of: receiving an initial upgrade message in the configuration server from a service provider to provide an end service product (e.g. from order entry BOM 15 to image builder 10); receiving and saving an end service product in a database associated with the configuration server (e.g. processes between the storage device 30 and the image builder 10); identifying a plurality of users having a contract requiring delivery of the end service product (e.g. col. 5 lines 5-52); and thereafter providing product information relating to the end service product to respective terminal servers (e.g. image server 40) associated with the plurality of users (e.g. all the links to terminal 60-63) identified to have contracts requiring delivery of the end service product for subsequent distribution by the terminal servers to respective terminals of users identified to have contracts requiring delivery of the end service product (e.g. col. 4 line 61 to col. 5 line 6 wherein the delta image can be considered as partial software upgrade).

Re claim 66, Kroening et al. further disclose in Figures 1-2 identifying any terminal servers, following the provision of to which the at least partial software upgrade which the at least partial software upgrade has not yet been transferred (e.g. col. 7 line 57 to col. 8 line 4).

Re claim 67, Kroening et al. further disclose in Figures 1-2 determining, in response to activation of a terminal associated with a terminal server, if the terminal server has been identified as a terminal server to which the at least partial software upgrade has not yet been transferred and, if so, providing the at least partial software upgrade to the terminal server (e.g. col. 4 line 61 to col. 5 line 4 and col. 7 line 57 to col. 8 line 4).

Re claims 68-69, these claims have similar limitations cited in claims 66-67 respectively. Thus, claims 68-69 are also rejected under the same rationale as cited in claims 66-67 respectively.

Re claims 70-71, these claims are system claims have similar limitations cited in claims 47 and 49 respectively. Thus, claims 70-71 are also rejected under the same rationale as cited in claims 47 and 49 respectively.

Re claim 72, Kroening et al. disclose in Figures 1-2 configuration server unit having a configuration tool for managing a configurable controlling function of a terminal system (e.g. abstract, general upgrade architecture in Figure 1, and claim 25 in col. 10) comprising: a database (e.g. storage device 30 in Figure 1) for saving upgrade information provided by a source of an at least partial software upgrade (e.g. as the baseline image in col. 5 lines 26-36), wherein said database associates the saved upgrade

information with the source of the at least partial software upgrade (e.g. as delta image in col. 4 line 61 to col. 5 line 5 and col. 5 lines 26-36); and an upgrade server unit (e.g. image builder 10 in Figure 1) for identifying a plurality of users (e.g. all the terminal links 60-63) requiring the at least partial software upgrade and for thereafter providing the at least partial software upgrade to respective terminal servers (e.g. image server 40) associated with the plurality of users identified to require the at least partial software upgrade for subsequent distribution by the terminal servers to respective terminals of users identified to require the at least partial software upgrade (e.g. col. 4 line 61 to col. 5 line 4 and col. 7 line 57 to col. 8 line 4).

Re claim 73, it has similar limitations cited in claim 72. Thus, claim 73 is also rejected under the same rationale as cited in claim 72.

Re claims 74-75, these claims are computer product claims have similar limitations cited in claims 47 and 49 respectively. Thus, claims 74-75 are also rejected under the same rationale as cited in claims 47 and 49 respectively.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kroening et al. (U.S. 6,080,207) in view of Kyle (U.S. 6,141,681).

Re claim 50, Kroening et al. fail to disclose in Figures 1-2 the end service product is transferred to the terminal server and a virus search is made to the end service product prior to conveying the product to the terminal server. However, Kyle teaches virus search is performed to the product before the next destination (Figure 8; and col. 6 lines 8-17). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Kyle's teaching of searching for Virus into Kroening's method at the source to provide free virus information to the terminal servers to protect the servers from viruses and preventing it from transmitting itself across the network.

Response to Arguments

13. Applicant's arguments with respect to claims 47-50 and 66-75 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. U.S. Patent No. 6,105,063
- b. U.S. Patent No. 6,510,466
- c. U.S. Patent No. 6,085,244
- d. U.S. Patent No. 6,006,034
- e. U.S. Patent No. 7,219,106

- f. U.S. Patent No. 7,206,852
- g. U.S. Patent No. 6,988,267
- h. U.S. Patent No. 6,976,062
- i. U.S. Patent No. 6,964,044
- j. U.S. Patent No. 6,725,377
- k. U.S. Patent No. 5,724,345
- l. U.S. Patent No. 6,199,204

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Phuoc H Nguyen
Primary Examiner
Art Unit 2143

January 10, 2008

A handwritten signature in black ink, appearing to be 'Phuoc H Nguyen', written in a cursive style with a large loop at the end.